

REFERENCE TITLE: dangerous crimes against children; sentencing

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2612

Introduced by
Representatives Mason: Ableser, Groe, Nichols, Tobin

AN ACT

AMENDING SECTIONS 13-604.01 AND 13-703, ARIZONA REVISED STATUTES; RELATING TO SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-604.01, Arizona Revised Statutes, is amended to
3 read:

4 13-604.01. Dangerous crimes against children: sentences:
5 definitions

6 A. A person who is at least eighteen years of age and who stands
7 convicted of a dangerous crime against children in the first degree involving
8 sexual assault of a minor who is twelve years of age or younger or sexual
9 conduct with a minor who is twelve years of age or younger shall be sentenced
10 to **NATURAL** life imprisonment and is not eligible for ~~suspension of sentence,~~
11 ~~probation, pardon~~ **COMMUTATION, WORK FURLOUGH, WORK RELEASE** or release from
12 confinement on any basis ~~except as specifically authorized by section 31-233,~~
13 ~~subsection A or B until the person has served thirty-five years or the~~
14 ~~sentence is commuted.~~ This subsection does not apply to masturbatory
15 contact.

16 B. Except as otherwise provided in this section, a person who is at
17 least eighteen years of age or who has been tried as an adult and who stands
18 convicted of a dangerous crime against children in the first degree involving
19 attempted first degree murder of a minor who is under twelve years of age,
20 second degree murder of a minor who is under twelve years of age, sexual
21 assault of a minor who is under twelve years of age, sexual conduct with a
22 minor who is under twelve years of age or manufacturing methamphetamine under
23 circumstances that cause physical injury to a minor who is under twelve years
24 of age ~~may~~ **SHALL** be sentenced to life imprisonment and is not eligible for
25 suspension of sentence, probation, pardon or release from confinement on any
26 basis except as specifically authorized by section 31-233, subsection A or B
27 until the person has served thirty-five years or the sentence is commuted.
28 If a life sentence is not imposed pursuant to this subsection, the person
29 shall be sentenced to a presumptive term of imprisonment for twenty years.

30 C. Except as otherwise provided in this section, a person who is at
31 least eighteen years of age or who has been tried as an adult and who stands
32 convicted of a dangerous crime against children in the first degree involving
33 attempted first degree murder of a minor who is twelve, thirteen or fourteen
34 years of age, second degree murder of a minor who is twelve, thirteen or
35 fourteen years of age, sexual assault of a minor who is twelve, thirteen or
36 fourteen years of age, taking a child for the purpose of prostitution, child
37 prostitution, sexual conduct with a minor who is twelve, thirteen or fourteen
38 years of age, continuous sexual abuse of a child, sex trafficking of a minor
39 who is under fifteen years of age or manufacturing methamphetamine under
40 circumstances that cause physical injury to a minor who is twelve, thirteen
41 or fourteen years of age or involving or using minors in drug offenses ~~shall~~
42 **MAY** be sentenced to **LIFE IMPRISONMENT AND IS NOT ELIGIBLE FOR SUSPENSION OF**
43 **SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON ANY BASIS EXCEPT**
44 **AS SPECIFICALLY AUTHORIZED BY SECTION 31-233, SUBSECTION A OR B UNTIL THE**
45 **PERSON HAS SERVED THIRTY-FIVE YEARS OR THE SENTENCE IS COMMUTED. IF A LIFE**

1 SENTENCE IS NOT IMPOSED PURSUANT TO THIS SUBSECTION, THE PERSON SHALL BE
2 SENTENCED TO a presumptive term of imprisonment for twenty years, ~~—~~ EXCEPT
3 THAT if the convicted person has been previously convicted of one predicate
4 felony the person shall be sentenced to a presumptive term of imprisonment
5 for thirty years.

6 D. Except as otherwise provided in this section, a person who is at
7 least eighteen years of age or who has been tried as an adult and who stands
8 convicted of a dangerous crime against children in the first degree involving
9 aggravated assault, molestation of a child, commercial sexual exploitation of
10 a minor, sexual exploitation of a minor, child abuse or kidnapping shall be
11 sentenced to a presumptive term of imprisonment for ~~seventeen~~ TWENTY
12 years. If the convicted person has been previously convicted of one
13 predicate felony the person shall be sentenced to a presumptive term of
14 imprisonment for ~~twenty-eight~~ THIRTY years.

15 E. Except as otherwise provided in this section, a person who is at
16 least eighteen years of age or who has been tried as an adult and who stands
17 convicted of a dangerous crime against children involving luring a minor for
18 sexual exploitation pursuant to section 13-3554 is guilty of a class 3 felony
19 and shall be sentenced to a presumptive term of imprisonment for ten years
20 and, unless the person has previously been convicted of a predicate felony,
21 the presumptive term may be increased or decreased by up to five years
22 pursuant to section 13-702, subsections B, C and D. If the person is
23 sentenced to a term of imprisonment the person is not eligible for release
24 from confinement on any basis except as specifically authorized by section
25 31-233, subsection A or B until the sentence imposed by the court has been
26 served, the person is eligible for release pursuant to section 41-1604.07 or
27 the sentence is commuted. If the convicted person has been previously
28 convicted of one predicate felony the person shall be sentenced to a
29 presumptive term of imprisonment for fifteen years and is not eligible for
30 suspension of sentence, probation, pardon or release from confinement on any
31 basis except as specifically authorized by section 31-233, subsection A or B
32 until the sentence imposed by the court has been served, the person is
33 eligible for release pursuant to section 41-1604.07 or the sentence is
34 commuted.

35 F. Except as otherwise provided in this section, a person who is at
36 least eighteen years of age or who has been tried as an adult and who stands
37 convicted of a dangerous crime against children involving sexual abuse under
38 section 13-1404 or bestiality under section 13-1411, subsection A, paragraph
39 2 is guilty of a class 3 felony and shall be sentenced to a presumptive term
40 of imprisonment for ~~five~~ TEN years, and, unless the person has previously
41 been convicted of a predicate felony, the presumptive term may be increased
42 or decreased by up to two and one-half years pursuant to section 13-702,
43 subsections B, C and D. If the person is sentenced to a term of imprisonment
44 the person is not eligible for release from confinement on any basis except
45 as specifically authorized by section 31-233, subsection A or B until the

1 sentence imposed by the court has been served, the person is eligible for
2 release pursuant to section 41-1604.07 or the sentence is commuted. If the
3 convicted person has been previously convicted of one predicate felony the
4 person shall be sentenced to a presumptive term of imprisonment for fifteen
5 years and is not eligible for suspension of sentence, probation, pardon or
6 release from confinement on any basis except as specifically authorized by
7 section 31-233, subsection A or B until the sentence imposed by the court has
8 been served, the person is eligible for release pursuant to section
9 41-1604.07 or the sentence is commuted.

10 G. The presumptive sentences prescribed in subsections B, C and D of
11 this section or subsections E and F of this section if the person has
12 previously been convicted of a predicate felony may be increased or decreased
13 by up to seven years pursuant to the provisions of section 13-702,
14 subsections B, C and D.

15 H. Except as provided in subsection F of this section, a person
16 sentenced for a dangerous crime against children in the first degree pursuant
17 to this section is not eligible for suspension of sentence, probation, pardon
18 or release from confinement on any basis except as specifically authorized by
19 section 31-233, subsection A or B until the sentence imposed by the court has
20 been served or commuted.

21 I. A person who stands convicted of any dangerous crime against
22 children in the first degree pursuant to subsection C or D of this section
23 and who has been previously convicted of two or more predicate felonies shall
24 be sentenced to life imprisonment and is not eligible for suspension of
25 sentence, probation, pardon or release from confinement on any basis except
26 as specifically authorized by section 31-233, subsection A or B until the
27 person has served not fewer than thirty-five years or the sentence is
28 commuted.

29 J. Notwithstanding chapter 10 of this title, a person who is at least
30 eighteen years of age or who has been tried as an adult and who stands
31 convicted of a dangerous crime against children in the second degree pursuant
32 to subsection C or D of this section is guilty of a class 3 felony and shall
33 be sentenced to a presumptive term of imprisonment for ten years. The
34 presumptive term may be increased or decreased by up to five years pursuant
35 to section 13-702, subsections B, C and D. If the person is sentenced to a
36 term of imprisonment the person is not eligible for release from confinement
37 on any basis except as specifically authorized by section 31-233, subsection
38 A or B until the person has served the sentence imposed by the court, the
39 person is eligible for release pursuant to section 41-1604.07 or the sentence
40 is commuted. A person who is convicted of any dangerous crime against
41 children in the second degree and who has been previously convicted of one or
42 more predicate felonies is not eligible for suspension of sentence,
43 probation, pardon or release from confinement on any basis except as
44 specifically authorized by section 31-233, subsection A or B until the

1 sentence imposed by the court has been served, the person is eligible for
2 release pursuant to section 41-1604.07 or the sentence is commuted.

3 K. Section 13-604, subsections M and O apply to the determination of
4 prior convictions.

5 L. The sentence ~~that is~~ imposed on a person by the court for a
6 dangerous crime against children under subsection D of this section ~~and that~~
7 ~~involves~~ INVOLVING child molestation or sexual abuse pursuant to subsection F
8 of this section may be served concurrently with other sentences if the
9 offense involved only one victim. The sentence imposed on a person for any
10 other dangerous crime against children in the first or second degree shall be
11 consecutive to any other sentence imposed on the person at any time,
12 including child molestation and sexual abuse of the same victim.

13 M. In this section, for purposes of punishment an unborn child shall
14 be treated like a minor who is under twelve years of age.

15 N. For the purposes of this section:

16 1. "Dangerous crime against children" means any of the following that
17 is committed against a minor who is under fifteen years of age:

18 (a) Second degree murder.

19 (b) Aggravated assault resulting in serious physical injury or
20 involving the discharge, use or threatening exhibition of a deadly weapon or
21 dangerous instrument.

22 (c) Sexual assault.

23 (d) Molestation of a child.

24 (e) Sexual conduct with a minor.

25 (f) Commercial sexual exploitation of a minor.

26 (g) Sexual exploitation of a minor.

27 (h) Child abuse as prescribed in section 13-3623, subsection A,
28 paragraph 1.

29 (i) Kidnapping.

30 (j) Sexual abuse.

31 (k) Taking a child for the purpose of prostitution as prescribed in
32 section 13-3206.

33 (l) Child prostitution as prescribed in section 13-3212.

34 (m) Involving or using minors in drug offenses.

35 (n) Continuous sexual abuse of a child.

36 (o) Attempted first degree murder.

37 (p) Sex trafficking.

38 (q) Manufacturing methamphetamine under circumstances that cause
39 physical injury to a minor.

40 (r) Bestiality as prescribed in section 13-1411, subsection A,
41 paragraph 2.

42 (s) Luring a minor for sexual exploitation.

43 A dangerous crime against children is in the first degree if it is a
44 completed offense and is in the second degree if it is a preparatory offense,

except attempted first degree murder is a dangerous crime against children in the first degree.

2. "Predicate felony" means any felony involving child abuse pursuant to section 13-3623, subsection A, paragraph 1, a sexual offense, conduct involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, or a dangerous crime against children in the first or second degree.

Sec. 2. Section 13-703, Arizona Revised Statutes, is amended to read:

13-703. Sentence of death or life imprisonment; aggravating and mitigating circumstances; definition

A. If the state has filed a notice of intent to seek the death penalty and the defendant is convicted of first degree murder as defined in section 13-1105, the defendant shall be sentenced to death or imprisonment in the custody of the state department of corrections for life or natural life as determined and in accordance with the procedures provided in section 13-703.01. A defendant who is sentenced to natural life is not eligible for commutation, parole, work furlough, work release or release from confinement on any basis. If the defendant is sentenced to life, the defendant shall not be released on any basis until the completion of the service of twenty-five calendar years if the murdered person was fifteen or more years of age and thirty-five years if the murdered person was under fifteen years of age or was an unborn child. In this section, for purposes of punishment an unborn child shall be treated like a minor who is under twelve years of age.

B. At the aggravation phase of the sentencing proceeding that is held pursuant to section 13-703.01, the admissibility of information relevant to any of the aggravating circumstances set forth in subsection F of this section shall be governed by the rules of evidence applicable to criminal trials. The burden of establishing the existence of any of the aggravating circumstances set forth in subsection F of this section is on the prosecution. The prosecution must prove the existence of the aggravating circumstances beyond a reasonable doubt.

C. At the penalty phase of the sentencing proceeding that is held pursuant to section 13-703.01, the prosecution or the defendant may present any information that is relevant to any of the mitigating circumstances included in subsection G of this section, regardless of its admissibility under the rules governing admission of evidence at criminal trials. The burden of establishing the existence of the mitigating circumstances included in subsection G of this section is on the defendant. The defendant must prove the existence of the mitigating circumstances by a preponderance of the evidence. If the trier of fact is a jury, the jurors do not have to agree unanimously that a mitigating circumstance has been proven to exist. Each juror may consider any mitigating circumstance found by that juror in determining the appropriate penalty.

D. Evidence that is admitted at the trial and that relates to any aggravating or mitigating circumstances shall be deemed admitted as evidence at a sentencing proceeding if the trier of fact considering that evidence is the same trier of fact that determined the defendant's guilt. The prosecution and the defendant shall be permitted to rebut any information received at the aggravation or penalty phase of the sentencing proceeding and shall be given fair opportunity to present argument as to whether the information is sufficient to establish the existence of any of the circumstances included in subsections F and G of this section.

E. In determining whether to impose a sentence of death or life imprisonment, the trier of fact shall take into account the aggravating and mitigating circumstances that have been proven. The trier of fact shall impose a sentence of death if the trier of fact finds one or more of the aggravating circumstances enumerated in subsection F of this section and then determines that there are no mitigating circumstances sufficiently substantial to call for leniency.

F. The trier of fact shall consider the following aggravating circumstances in determining whether to impose a sentence of death:

1. The defendant has been convicted of another offense in the United States for which under Arizona law a sentence of life imprisonment or death was imposable.

2. The defendant has been or was previously convicted of a serious offense, whether preparatory or completed. Convictions for serious offenses committed on the same occasion as the homicide, or not committed on the same occasion but consolidated for trial with the homicide, shall be treated as a serious offense under this paragraph.

3. In the commission of the offense the defendant knowingly created a grave risk of death to another person or persons in addition to the person murdered during the commission of the offense.

4. The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

5. The defendant committed the offense as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value.

6. The defendant committed the offense in an especially heinous, cruel or depraved manner.

7. The defendant committed the offense while:

(a) In the custody of or on authorized or unauthorized release from the state department of corrections, a law enforcement agency or a county or city jail.

(b) On probation for a felony offense.

8. The defendant has been convicted of one or more other homicides, as defined in section 13-1101, that were committed during the commission of the offense.

9. The defendant was an adult at the time the offense was committed or was tried as an adult and the murdered person was under fifteen years of age,

1 was an unborn child in the womb at any stage of its development or was
2 seventy years of age or older.

3 10. The murdered person was an on duty peace officer who was killed in
4 the course of performing the officer's official duties and the defendant
5 knew, or should have known, that the murdered person was a peace officer.

6 11. The defendant committed the offense with the intent to promote,
7 further or assist the objectives of a criminal street gang or criminal
8 syndicate or to join a criminal street gang or criminal syndicate.

9 12. The defendant committed the offense to prevent a person's
10 cooperation with an official law enforcement investigation, to prevent a
11 person's testimony in a court proceeding, in retaliation for a person's
12 cooperation with an official law enforcement investigation or in retaliation
13 for a person's testimony in a court proceeding.

14 13. The offense was committed in a cold, calculated manner without
15 pretense of moral or legal justification.

16 14. The defendant used a remote stun gun or an authorized remote stun
17 gun in the commission of the offense. For the purposes of this paragraph:

18 (a) "Authorized remote stun gun" means a remote stun gun that has all
19 of the following:

20 (i) An electrical discharge that is less than one hundred thousand
21 volts and less than nine joules of energy per pulse.

22 (ii) A serial or identification number on all projectiles that are
23 discharged from the remote stun gun.

24 (iii) An identification and tracking system that, on deployment of
25 remote electrodes, disperses coded material that is traceable to the
26 purchaser through records that are kept by the manufacturer on all remote
27 stun guns and all individual cartridges sold.

28 (iv) A training program that is offered by the manufacturer.

29 (b) "Remote stun gun" means an electronic device that emits an
30 electrical charge and that is designed and primarily employed to incapacitate
31 a person or animal either through contact with electrodes on the device
32 itself or remotely through wired probes that are attached to the device or
33 through a spark, plasma, ionization or other conductive means emitting from
34 the device.

35 15. THE DEFENDANT COMMITTED THE OFFENSE AGAINST A PERSON WHO WAS UNDER
36 TWELVE YEARS OF AGE AND THE OFFENSE COMMITTED AGAINST THE MURDERED PERSON
37 INVOLVED A VIOLATION OF CHAPTER 14 OR 35.1 OF THIS TITLE.

38 G. The trier of fact shall consider as mitigating circumstances any
39 factors proffered by the defendant or the state that are relevant in
40 determining whether to impose a sentence less than death, including any
41 aspect of the defendant's character, propensities or record and any of the
42 circumstances of the offense, including but not limited to the following:

43 1. The defendant's capacity to appreciate the wrongfulness of his
44 conduct or to conform his conduct to the requirements of law was

1 significantly impaired, but not so impaired as to constitute a defense to
2 prosecution.

3 2. The defendant was under unusual and substantial duress, although
4 not such as to constitute a defense to prosecution.

5 3. The defendant was legally accountable for the conduct of another
6 under the provisions of section 13-303, but his participation was relatively
7 minor, although not so minor as to constitute a defense to prosecution.

8 4. The defendant could not reasonably have foreseen that his conduct
9 in the course of the commission of the offense for which the defendant was
10 convicted would cause, or would create a grave risk of causing, death to
11 another person.

12 5. The defendant's age.

13 H. For purposes of determining whether a conviction of any dangerous
14 crime against children is a serious offense pursuant to this section, an
15 unborn child shall be treated like a minor who is under twelve years of age.

16 I. For the purposes of this section, "serious offense" means any of
17 the following offenses if committed in this state or any offense committed
18 outside this state that if committed in this state would constitute one of
19 the following offenses:

20 1. First degree murder.

21 2. Second degree murder.

22 3. Manslaughter.

23 4. Aggravated assault resulting in serious physical injury or
24 committed by the use, threatened use or exhibition of a deadly weapon or
25 dangerous instrument.

26 5. Sexual assault.

27 6. Any dangerous crime against children.

28 7. Arson of an occupied structure.

29 8. Robbery.

30 9. Burglary in the first degree.

31 10. Kidnapping.

32 11. Sexual conduct with a minor under fifteen years of age.

33 12. Burglary in the second degree.

34 13. Terrorism.